



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/677,014   | 09/30/2003  | Folkert Horst        | 7611.25USC1         | 3230             |
| 23552  | 7590        | 03/22/2005           | EXAMINER            |                  |
| MERCHANT & GOULD PC<br>P.O. BOX 2903<br>MINNEAPOLIS, MN 55402-0903 |             |                      | NGUYEN, TAN QUANG   |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |

3661

DATE MAILED: 03/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                                      |                                     |  |
|------------------------------|--------------------------------------|-------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/677,014 | <b>Applicant(s)</b><br>HORST ET AL. |  |
|                              | <b>Examiner</b><br>TAN Q NGUYEN      | <b>Art Unit</b><br>3661             |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>09/20/03</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAIL ACTION

### *Notice to Applicant(s)*

1. This application has been examined. Claims 1-20 are pending.
2. The prior art submitted on September 30, 2003 has been considered.
3. Double Patenting
4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).
5. A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).
6. Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Art Unit: 3661

7. Claims 1-20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 5-7, 10, 14, 15, 18-20, 23, 27, 28, 31-33, 35 and 40 of U.S. Patent No. 6,658,331. Although the conflicting claims are not identical, they are not patentably distinct from each other because a “manually operable control device allowing an operator to select a braking setting” of claim 1 (as exemplary of claim 1, 14, 27 and 40) of the Patent 6,658,331 is obviously similar to “an input for receiving signal indicative of a brake setting” of claim 1 (as exemplary of claims 1, 7, 13 and 19) of the present application. Furthermore, the feature “a braking setting display including an array of discrete display element” of claim 1 (as exemplary of claims 1, 14, 27 and 40) of the Patent 6,658,331 and “a brake setting display including at least first and second display elements” of claim 1 (as exemplary of claims 1, 7, 13 and 19) of the present application are obviously the same since they includes at two display elements.

8. As per claims 2-6, 8-12, 14-18 and 20, they are identical or anticipated by the claims 2, 5, 6, 7, 10, 15, 18, 19, 20, 23, 28, 31, 32, 33, 35, and 28, respectively, of the Patent 6,658,331.

### ***Conclusion***

9. All claims are rejected.

10. The following references are cited as being of general interest: Pross et al. (6,396,466) and Nickles et al. (6,219,595).

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Tan Q. Nguyen, whose telephone number is

Art Unit: 3661

(703) 305-9755. The examiner can normally be reached on Monday-Thursday from 5:30 AM-4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Black, can be reached on (703) 305-8233.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

or faxed to the Official Fax Center:

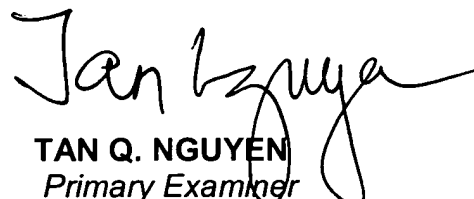
(703) 872-9306, (for informal or draft communications, please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park V, 2451 Crystal Drive, Arlington, VA., Seventh Floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1113.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/tqn  
March 16, 2005

  
**TAN Q. NGUYEN**  
*Primary Examiner*  
Art Unit 3661